

## § 20.2014-4

so that the aggregate allowable marital deduction is limited to one-half the adjusted gross estate, or \$400,000 (which is 50 percent of \$800,000). Factor “G” of the ratio which is used in determining the “second limitation” is computed as follows:

Value of property situated in Country X. ....	\$300,000
Less: Reduction described in § 20.2014-3 (b)(1) determined as follows (see also end of § 20.2014-3(b))—	
Total amount of bequests which qualify for the marital deduction:	
Specific bequest of Country X stock .....	\$300,000
Specific bequest of United States stock ....	200,000
	<hr/> 500,000
Limitation on aggregate marital deduction under section 2056(c) .....	400,000
Part of specific bequest of Country X stock with respect to which the marital deduction is allowed— $(\$400,000 \div \$500,000 \times \$300,000)$	<hr/> 240,000
Factor “G” of the ratio .....	60,000

(iii) Thus, the “second limitation” on the credit for foreign death taxes is:

$[\$60,000 \text{ (factor G of the ratio stated at § 20.2014-3(a); see also subdivision (ii) above)} + (\$850,000 - \$40,000 - \$400,000 \text{ (factor H of the ratio stated at § 20.2014-3(a))}] \times (\$81,700 - \$5,520) \text{ (factor F of the ratio stated at § 20.2014-3(a))} = \$11,148.29.$

(d) If the foreign country imposes more than one kind of death tax or imposes taxes at different rates upon the several shares of an estate, or if the foreign country and a political subdivision or possession thereof each imposes a death tax, the “second limitation” is still computed by applying the ratio set forth in paragraph (a) of this section. Factor “G” of the ratio is determined by taking into consideration the combined value of the foreign property which is subjected to each different tax or different rate. The combined value, however, cannot exceed the value at which such property was included in the gross estate for Federal estate tax purposes. Thus, if Country X imposes a tax on the inheritance of a surviving spouse at a 10-percent rate and on the inheritance of a son at a 20-percent rate, the combined value of their inheritances is taken into consideration in determining factor “G” of the ratio, which is then used in computing the “second limitation.” However, the “first limitation” is computed as pro-

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vided in paragraph (b) of § 20.2014-2. The lesser of the “first limitation” and the “second limitation” is the credit for foreign death taxes.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6600, 27 FR 4984, May 29, 1962; T.D. 7296, 38 FR 34193, Dec. 12, 1973; T.D. 8522, 59 FR 9646, Mar. 1, 1994]

### § 20.2014-4 Application of credit in cases involving a death tax convention.

(a) *In general.* (1) If credit for a particular foreign death tax is authorized by a death tax convention, there is allowed either the credit provided for by the convention or the credit provided for by section 2014, whichever is the more beneficial to the estate. For cases where credit may be taken under both the death tax convention and section 2014, see paragraph (b) of this section. The application of this paragraph may be illustrated by the following example:

*Example.* (i) Decedent, a citizen of the United States and a domiciliary of foreign Country X at the time of his death on December 1, 1966, left a gross estate of \$1 million which includes the following: Shares of stock issued by a Country X corporation, valued at \$400,000; bonds issued in 1962 by the United States and physically located in Country X, valued at \$350,000; and real estate located in the United States, valued at \$250,000. Expenses, indebtedness, etc., amounted to \$50,000. Decedent left his entire estate to his son. There is in effect a death tax convention between the United States and Country X which provides for the allowance of credit by the United States for succession duties imposed by the national government of Country X. The gross Federal estate tax is \$307,200, and the credit for State death taxes is \$33,760. Country X imposed a net succession duty on the stocks and bonds of \$180,000. Under the situs rules referred to in paragraph (a)(3) of § 20.2014-1, the shares of stock comprise the only property deemed to be situated in Country X. (If the decedent has died before November 14, 1966, the bonds also would be deemed to have their situs in Country X.) Under the convention, both the stocks and the bonds are deemed to be situated in Country X. In this example all figures are rounded to the nearest dollar.

(ii)(a) The credit authorized by the convention for death taxes imposed by Country X is computed as follows:

(1) Country X tax attributable to property situated in Country X and subjected to tax by both countries  $(\$750,000 \div \$750,000 \times \$180,000)$  ..... \$180,000

(2) Federal estate tax attributable to property situated in Country X and subjected to tax by both countries—(\$750,000 ÷ \$1,000,000 × \$273,440) .....	205,080
(3) Credit (subdivision (1) or (2), whichever is less) .....	180,000

(b) The credit authorized by section 2014 for death taxes imposed by Country X is computed as follows:

(1) "First limitation" computed under § 20.2014-2 (\$400,000÷\$750,000×\$180,000) .....	\$96,000
(2) "Second limitation" computed under § 20.2014-3 (\$400,000÷\$1,000,000×\$273,440) .....	109,376
(3) Credit (subdivision (1) or (2), whichever is less) .....	96,000

(iii) On the basis of the facts contained in this example, the credit of \$180,000 authorized by the convention is the more beneficial to the estate.

(2) It should be noted that the greater of the treaty credit and the statutory credit is not necessarily the more beneficial to the estate. Such is the situation, for example, in those cases which involve both a foreign death tax credit and a credit under section 2013 for tax on prior transfers. The reason is that the amount of the credit for tax on prior transfers may differ depending upon whether the credit for foreign death tax is taken under the treaty or under the statute. Therefore, under certain circumstances, the advantage of taking the greater of the treaty credit and the statutory credit may be more than offset by a resultant smaller credit for tax on prior transfers. The solution is to compute the net estate tax payable first on the assumption that the treaty credit will be taken and then on the assumption that the statutory credit will be taken. Such computations will indicate whether the treaty credit or the statutory credit is in fact the more beneficial to the estate.

(b) *Taxes imposed by both a foreign country and a political subdivision thereof.* If death taxes are imposed by both a foreign country with which the United States has entered into a death tax convention and one or more of its possessions or political subdivisions, there is allowed, against the tax imposed by section 2001—

(1) A credit for the combined death taxes paid to the foreign country and its political subdivisions or possessions as provided for by the convention, or

(2) A credit for the combined death taxes paid to the foreign country and

its political subdivisions or possessions as determined under section 2014, or

(3)(i) A credit for that amount of the combined death taxes paid to the foreign country and its political subdivisions or possessions as is allowable under the convention, and

(ii) A credit under section 2014 for the death taxes paid to each political subdivision or possession, but only to the extent such death taxes are not directly or indirectly creditable under the convention.

whichever is the most beneficial to the estate. The application of this paragraph may be illustrated by the following example:

*Example.* (1) Decedent, a citizen of the United States and a domiciliary of Province Y of foreign Country X at the time of his death on February 1, 1966, left a gross estate of \$250,000 which includes the following: Bonds issued by Country X physically located in Province Y, valued at \$75,000; bonds issued by Province Z of Country X and physically located in the United States, valued at \$50,000; and shares of stock issued by a domestic corporation, valued at \$125,000. Decedent left his entire estate to his son. Expenses, indebtedness etc., amounted to \$26,000. The Federal estate tax after allowance of the credit for State death taxes is \$38,124. Province Y imposed a death tax of 8 percent on the Country X bonds located therein which amounted to \$6,000. No death tax was imposed by Province Z. Country X imposed a death tax of 15 percent on the Country X bonds and the Province Z bonds which amounted to \$18,750 before allowance of any credit for the death tax of Province Y. Country X allows against its death taxes a credit for death taxes paid to any of its provinces on property which it also taxes, but only to the extent of one-half of the Country X death tax attributable to the property, or the amount of death taxes paid to its province, whichever is less. Country X, therefore, allowed a credit of \$5,625 for the death taxes paid to Province Y. There is in effect a death tax convention between the United States and Country X which provides for allowance of credit by the United States for death taxes imposed by the national government of Country X. The death tax convention provides that in computing the "first limitation" for the credit under the convention, the tax of Country X is not to be reduced by the amount of the credit allowed for provincial taxes. Under the situs rules described in paragraph (a)(3) of § 20.2014-1, only the Country X bonds located in Province Y are deemed situated in Country X. (The bonds issued by Province Z also would be deemed

to have their situs in Country X if the decedent had died on or after November 14, 1966.) Under the convention, both the Country X bonds and the Province Z bonds are deemed to be situated in Country X. In this example all figures are rounded to the nearest dollar.

(2)(i) The credit authorized by section 2014 for death taxes imposed by Country X (which includes death taxes imposed by Province Y according to § 20.2014-1(a)(1)) is computed as follows:

(a) "First limitation" with respect to tax imposed by national government of Country X (computed under paragraph (b) of § 20.2014-2)	
(1) Gross Country X death tax attributable to Country X bonds (before allowance of provincial death taxes)	
(75,000+\$125,000×\$18,750) .....	\$11,250
(2) Less credit for Province Y death taxes on such bonds .....	5,625
(3) Net Country X death tax attributable to such bonds .....	5,625
(b) "First limitation" with respect to tax imposed by Province Y (computed under paragraph (b) of § 20.2014-2) (\$75,000+\$75,000×\$6,000)	
.....	6,000
(c) Total "first limitation" .....	11,625
(d) "Second limitation" (computed under paragraph (d) of § 20.2014-3)	
(\$75,000+\$250,000×\$38,124) .....	11,437
(e) Credit (subdivision (c) or (d), whichever is less)	11,437

(ii) The credit authorized under the death tax convention between the United States and Country X is computed as follows:

(a) Country X tax attributable to property situated in Country X and subject to tax by both countries (\$125,000+\$125,000×\$18,750) .....	\$18,750
(b) Federal estate tax attributable to property situated in Country X and subjected to tax by both countries (\$125,000+\$250,000×\$38,124) .....	19,062
(c) Credit (subdivision (a) or (b), whichever is less)	18,750

(3) If the estate takes a credit for death taxes under the convention, it would receive a credit of \$18,750 which would include an indirect credit of \$5,625 for death taxes paid to Province Y. The death tax of Province Y which was not directly or indirectly creditable under the convention is \$375 (\$6,000-\$5,625). A credit for this tax would also be allowed under section 2014 but only to the extent of \$187, as the amount of credit for the combined foreign death taxes is limited to the amount of Federal estate tax attributable to the property, determined in accordance with the rules prescribed for computing the "second limitation" under section 2014. In this case, the "second limitation" under section 2014 on the taxes attributable to the Country X bonds is \$11,437 (see computation set forth in (2)(i) (d) of this example). The amount of credit under the convention for taxes attributable to Country X bonds is \$11,250 - (\$75,000+\$125,000×\$18,750). Inasmuch as the "second limitation" under section 2014 in respect of the Country X bonds (\$11,437) exceeds the amount of the credit allowed under the convention in respect of the Country X bonds (\$11,250) by \$187, the additional

credit allowable under section 2014 for the death taxes paid to Province Y not directly or indirectly creditable under the convention is limited to \$187.

(c) *Taxes imposed by two foreign countries with respect to the same property.* It is stated as a general rule in paragraph (a)(2) of § 20.2014-1 that if credits against the Federal estate tax are allowable under section 2014, or under section 2014 and one or more death tax conventions, for death taxes paid to more than one country, the credits are combined and the aggregate amount is credited against the Federal estate tax. This rule may result in credit being allowed for taxes imposed by two different countries upon the same item of property. If such is the case, the total amount of the credits with respect to such property is limited to the amount of the Federal estate tax attributable to the property, determined in accordance with the rules prescribed for computing the "second limitation" set forth in § 20.2014-3. The application of this section may be illustrated by the following example:

*Example.* The decedent, a citizen of the United States and a domiciliary of Country X at the time of his death on May 1, 1967, left a taxable estate which included bonds issued by Country Z and physically located in Country X. Each of the three countries involved imposed death taxes on the Country Z bonds. Assume that under the provisions of a treaty between the United States and Country X the estate is entitled to a credit against the Federal estate tax for death taxes imposed by Country X on the bonds in the maximum amount of \$20,000. Assume, also, that since the decedent died after November 13, 1966, so that under the situs rules referred to in paragraph (a)(3) of § 20.2014-1 the bonds are deemed to have their situs in Country Z, the estate is entitled to a credit against the Federal estate tax for death taxes imposed by Country Z on the bonds in the maximum amount of \$10,000. Finally, assume that the Federal estate tax attributable to the bonds is \$25,000. Under these circumstances, the credit allowed the estate with respect to the bonds would be limited to \$25,000.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6742, 29 FR 7928, June 23, 1964; T.D. 7296, 38 FR 34193, Dec. 12, 1973]

#### § 20.2014-5 Proof of credit.

(a) If the foreign death tax has not been determined and paid by the time